

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
WISCONSIN COUNCIL 40, AFSCME, AFL-CIO
Involving Certain Employees of
LAFAYETTE COUNTY MEMORIAL HOSPITAL

Case 14
No. 61394
ME-3887

Decision No. 17426-C

Appearances:

Mr. Thomas Larsen, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, 1734 Arrowhead Drive, Beloit, Wisconsin 53511, appearing on behalf of Wisconsin Council 40, AFSCME, AFL-CIO.

Brennan, Steil, Basting & MacDougall, S.C., by **Attorney Howard Goldberg**, P.O. Box 990, Madison, Wisconsin 53701-0990, appearing on behalf of Lafayette County Memorial Hospital.

**FINDINGS OF FACT, CONCLUSION OF LAW
AND ORDER CLARIFYING BARGAINING UNIT**

On September 13, 2002, pursuant to and following an election conducted by the Wisconsin Employment Relations Commission, Wisconsin Council 40, AFSCME, AFL-CIO was certified by the Commission as the collective bargaining representative of certain employees of the Lafayette County Memorial Hospital. The Hospital employees had previously been represented for the purposes of collective bargaining by the Memorial Hospital Employees Association. The Association chose not to be on the ballot in the election through which AFSCME became the collective bargaining representative.

Prior to the election, the County and AFSCME agreed that if AFSCME became the collective bargaining representative of the Memorial Hospital employees, the Commission would decide whether the current bargaining unit positions of Laboratory Supervisor, Food Service Supervisor, Radiology Supervisor, and Out-Patient Clinic Coordinator should be excluded from the bargaining unit because the incumbents are supervisors within the meaning of Sec. 111.70(1)(o)1, Stats.

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Pursuant to that agreement, hearing was held by Commission Examiner Peter G. Davis in Darlington, Wisconsin on September 23, 2002. Due to illness, a transcript of the hearing did not become available until December 11, 2002. Following receipt of the transcript, the parties filed briefs by January 7, 2003.

Having reviewed the record and being fully advised in the premises, the Commission makes and issues the following

FINDINGS OF FACT

1. Lafayette County, herein the County, is a municipal employer having its principal offices in Darlington, Wisconsin. The County provides various services to its citizens including health care through its Memorial Hospital, herein the Hospital.

2. Wisconsin Council 40, AFSCME, AFL-CIO, herein AFSCME, is a labor organization having its principal offices in Madison, Wisconsin. As described in LAFAYETTE COUNTY, DEC. NO. 17426-B (WERC, 9/02), AFSCME is the collective bargaining representative for:

. . . all regular full-time and regular part-time employees of the Lafayette County Memorial Hospital, including Registered Nurses, but excluding supervisory, managerial and confidential employees. . . .

3. The Hospital employs 86 individuals – 56 of whom are in the bargaining unit represented by AFSCME.

The direct administration of the Hospital is the responsibility of the Administrator Sherry Kudronowicz, Assistant Administrator Joel Gehling and the Director of Nursing.

The Hospital is organized into 18 departments – four of which are X-Ray Radiology, Laboratory, Dietary, and Out-Patient Clinic.

4. The X-Ray Radiology Department consists of the Radiology Supervisor, a secretary and four technicians. The Radiology Supervisor reports directly to the Hospital Administrator and attends the monthly management meetings convened by the Administrator.

The Radiology Supervisor is directly responsible for the day-to-day operation of the X-Ray Radiology Department. She independently makes work assignments to Department employees, approves or disapproves leave requests, authorizes overtime where necessary, functions as the first step management representative under the contractual grievance procedure with authority to adjust certain types of grievances, and conducts annual evaluations of Department employees.

The Radiology Supervisor does not spend the majority of her time performing supervisory duties.

The Radiology Supervisor has the independent authority to issue written reprimands and effectively recommends suspension or discharge of regular and probationary employees.

The Radiology Supervisor effectively recommends the hiring of new employees but does not effectively recommend which unit employee will transfer into a vacant Department position.

The 2002 hourly wage rate range for the Radiology Supervisor was \$15.83 – \$16.47 while the comparable range for the technicians was \$13.07 – \$13.59 and for the secretary was \$9.78 - \$10.17. The Radiology Supervisor's level of pay as compared to other Department employees reflects her supervisory responsibilities.

The Radiology Supervisor possesses supervisory duties and responsibilities in sufficient combination and degree to be a supervisor.

5. The Laboratory Department consists of the Laboratory Supervisor, a secretary and four technicians. The Laboratory Supervisor reports directly to the Hospital Administrator and attends the monthly management meetings convened by the Administrator.

The Laboratory Supervisor is directly responsible for the day-to-day operation of the Laboratory Department. She independently makes work assignments to Department employees, approves or disapproves leave requests, authorizes overtime where necessary, functions as the first step management representative under the contractual grievance procedure with authority to adjust certain types of grievances, and conducts annual evaluations of Department employees.

The Laboratory Supervisor does not spend the majority of her time performing supervisory duties.

The Laboratory Supervisor has the independent authority to issue written reprimands and effectively recommends suspension or discharge of regular and probationary employees.

The Laboratory Supervisor effectively recommends the hiring of new employees but does not effectively recommend which unit employee will transfer into a vacant Department position.

The 2002 hourly wage rate range for the Laboratory Supervisor was \$17.66 - \$18.37 while the comparable range for the technicians was \$12.24 - \$12.73. The Laboratory Supervisor's level of pay as compared to other Department employees reflects her supervisory responsibilities.

The Laboratory Supervisor possesses supervisory duties and responsibilities in sufficient combination and degree to be a supervisor.

6. The Dietary Department consists of the Food Service Supervisor and two cooks. The Food Service Supervisor reports directly to the Hospital Assistant Administrator and attends the monthly management meetings convened by the Hospital Administrator.

The Food Service Supervisor is directly responsible for the day-to-day operation of the Dietary Department. She independently makes work assignments to Department employees, approves or disapproves leave requests, authorizes overtime where necessary, functions as the first step management representative under the contractual grievance procedure with authority to adjust certain types of grievances, and conducts annual evaluations of Department employees.

The Food Service Supervisor does not spend the majority of her time performing supervisory duties.

The Food Service Supervisor has the independent authority to issue written reprimands and effectively recommends suspension or discharge of regular and probationary employees.

The Food Service Supervisor effectively recommends the hiring of new employees but does not effectively recommend which unit employee will transfer into a vacant Department position.

The 2002 hourly wage rate range for the Food Service Supervisor was \$13.74 - \$14.29 while the comparable range for the cooks was \$ 9.96 - \$10.36. The Food Service Supervisor's level of pay as compared to other Department employees reflects her supervisory responsibilities.

The Food Service Supervisor possesses supervisory duties and responsibilities in sufficient combination and degree to be a supervisor.

7. The Outpatient Clinic Department consists of the Out-Patient Clinic Coordinator and two assistants. The Coordinator reports directly to the Director of Nursing and attends the monthly management meetings convened by the Hospital Administrator.

The Coordinator is directly responsible for the day-to-day operation of the Clinic Department. She independently makes work assignments to Department employees, approves or disapproves leave requests, authorizes overtime where necessary, functions as the first step management representative under the contractual grievance procedure with authority to adjust certain types of grievances, and conducts annual evaluations of Department employees.

The Coordinator does not spend the majority of her time performing supervisory duties.

The Coordinator has the independent authority to issue written reprimands and effectively recommends suspension or discharge of regular and probationary employees.

The Coordinator effectively recommends the hiring of new employees but does not effectively recommend which unit employee will transfer into a vacant Department position.

The 2002 hourly wage rate range for the Coordinator was \$11.65 - \$12.12 while the comparable range for the assistants was \$ 9.73 - \$10.12. The Coordinator's level of pay as compared to other Department employees reflects her supervisory responsibilities.

The Out-Patient Clinic Coordinator possesses supervisory duties and responsibilities in sufficient combination and degree to be a supervisor.

Based on the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSION OF LAW

The Radiology Supervisor, Laboratory Supervisor, Food Service Supervisor and the Out-Patient Clinic Coordinator are supervisors within the meaning of Sec. 111.70(1)(o)1, Stats. and thus are not municipal employees within the meaning of Sec. 111.70(1)(i), Stats.

Based on the above and foregoing Findings of Fact and Conclusion of Law, the Commission makes and issues the following

ORDER CLARIFYING BARGAINING UNIT

The Radiology Supervisor, Laboratory Supervisor, Food Service Supervisor and the Out-Patient Clinic Coordinator are excluded from the bargaining unit described in Finding of Fact 2.

Given under our hands and seal at the City of Madison, Wisconsin, this 3rd day of March, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner

Lafayette County

**MEMORANDUM ACCOMPANYING FINDINGS OF FACT,
CONCLUSION OF LAW AND ORDER CLARIFYING BARGAINING UNIT**

APPLICABLE LAW

When determining whether an employee is a supervisor, we apply Sec. 111.70(1)(o)1, Stats., which defines a supervisor as an individual who:

. . . has authority, in the interest of the municipal employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

When interpreting this statutory language, we consider the following:

1. The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees;
2. The authority to direct and assign the work force;
3. The number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees;
4. The level of pay, including an evaluation of whether the supervisor is paid for his/her skill or for his/her supervision of employees;
5. Whether the supervisor is primarily supervising an activity or is primarily supervising employees;
6. Whether the supervisor is a working supervisor or whether he spends a substantial majority of his/her time supervising employees; and
7. The amount of independent judgment exercised in the supervision of employees.

TAYLOR COUNTY, DEC. NO. 24261-F (WERC, 5/98).

Not all of the above-quoted factors need to reflect supervisory status for us to find an individual to be a supervisor. Our task is to determine whether the factors appear in sufficient combination and degree to warrant finding an employee to be a supervisor. RICE LAKE HOUSING AUTHORITY, DEC. NO. 30066 (WERC, 2/01).

When deciding whether the four employees are supervisors, AFSCME argues that we should also consider the fact that the County did not seek to exclude these employees from the bargaining unit prior to the time AFSCME became the bargaining representative. We reject this argument. We decide the supervisory status of the employees based on evidence of their current authority and responsibilities. Even if it is the case that the disputed employees' current authority and responsibility does not differ from what was present before AFSCME became the representative, we have a statutory responsibility to resolve such issues whenever they are raised by applying the statutory definition in Sec. 111.70(1)(o)1, Stats. to the evidence presented. MANITOWOC SCHOOLS, DEC. NO. 29771-B (WERC, 7/00).

DISCUSSION

The evidence presented by the parties establishes that there is a substantial similarity among the four employees as to the factors we consider when determining whether they are supervisors. Therefore, we will analyze the status of the four employees as a group.

As to Factor 1, we conclude that the four employees have the authority to effectively recommend the hiring and discharge of employees and have the independent authority to impose discipline up to a written reprimand. We further conclude that the four employees do not have the authority to transfer or promote employees or to effectively recommend such action.

Regarding hiring, the evidence establishes that the four employees have had or will have substantial involvement in the hiring process. The Administrator relies on the four employees to seek applicants for a job opening, conduct the hiring interview, check references, and make a recommendation as to whether an applicant should be hired. Although the Administrator is present during the interview, she credibly testified that she would not hire any applicant who is not recommended by the employee who will direct the applicant's work. The Administrator's testimony is corroborated by all of the hiring decisions (three) as to which evidence was presented -- in each instance the applicant recommended by the employee who will direct the applicant's work was hired. Given all of the foregoing, we reject AFSCME's argument that the Administrator only relies on the alleged supervisors for input as to an applicant's technical qualifications and have concluded that the four disputed employees can each effectively recommend the hiring of an employee.

Regarding discipline, the Administrator credibly testified that each of the four employees has the independent authority to discipline employees through issuance of a written warning. While there is no evidence of any formal discipline having been imposed on non-probationary employees, the evidence presented as to the termination of probationary employees (who are in the bargaining unit and represented by AFSCME) supports the conclusion that each of the four employees has the effective authority to recommend

termination of both probationary and non-probationary employees. In particular, we note that when presented with a recommended termination, the Administrator did not independently investigate the alleged misconduct and accepted the alleged supervisor's recommendation of discharge. Therefore, we have concluded that the four alleged supervisors have significant independent disciplinary authority and have the authority to effectively recommend suspension and discharge.

In reaching this conclusion, we acknowledge AFSCME's argument that disciplinary duties take up little of the alleged supervisors' time because discipline is rare. However, as pointed out by the County, we have consistently held that the critical determination as to disciplinary authority is not how often that authority is utilized but rather what is the alleged supervisor's authority when disciplinary circumstances arise. CITY OF FOND DU LAC, DEC. NO. 8168-D (WERC, 7/98). Here, we are persuaded that when disciplinary circumstances arise, the four alleged supervisors have substantial disciplinary authority.

Turning to the question of transfers and promotions, the record establishes that there are no promotional opportunities within the bargaining unit. As to transfers, the testimony of the Administrator persuades us the four alleged supervisors do not have the effective authority to recommend transfers. As the Administrator explained, unlike a hiring scenario where she is not familiar with the applicants and relies on the four alleged supervisors, she is likely to take an active role when deciding which bargaining unit applicant will be selected to fill a vacant position.

Looking at Factor 2, the evidence establishes that the four alleged supervisors have substantial authority to direct and assign work to the employees in their respective departments. Each alleged supervisor makes work assignments to department employees, approves or disapproves leave requests, authorizes overtime where necessary, functions as the first step management representative under the contractual grievance procedure with authority to adjust certain types of grievances, and conducts annual evaluations of department employees. AFSCME correctly points out that most operational decisions are routine. However, we are satisfied that when and if significant operational judgments need to be made, the four alleged supervisors will either make the decision or play a substantial role in the Hospital's decision-making process.

As to Factor 3, AFSCME correctly points out that the number of employees allegedly supervised is small. When the four alleged supervisors are working, they have the direct responsibility for the employees in their departments. During times when the alleged supervisor is not working but department employees are, the Administrator, Assistant Administrator or Director of Nursing assumes some responsibility for the employees.

Regarding Factor 4, each of the four alleged supervisors is paid substantially more than the other employees in the relevant departments. Particularly in light of the fact that the alleged supervisors all spend a significant amount of time performing the same work as other

department employees, we conclude that the alleged supervisors' wage rates reflect their supervision of employees.

Looking at Factors 5 and 6, we are persuaded that although none of the four alleged supervisors spends the majority of their time supervising employees, their authority as to hiring, discipline and direction of employees warrants a conclusion that they are primarily supervising employees rather than an activity.

Regarding Factor 7, as reflected in our discussion of Factors 1 and 2, the four alleged supervisors exercise substantial independent judgment as to the hiring and disciplining of employees and lesser independent judgment as to the direction and assignment of employees.

Considering all of the foregoing, we conclude that the Radiology Supervisor, Laboratory Supervisor, Food Service Supervisor and the Out-Patient Clinic Coordinator are supervisors within the meaning of Sec. 111.70(1)(o)1, Stats. Although the number of employees they direct is small and the amount of independent judgment they exercise in day-to-day supervision is limited, their authority and exercise of independent judgment as to hiring, discipline and evaluation is substantial and sufficient to establish supervisory status.

Dated at Madison, Wisconsin, this 3rd day of March, 2003.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

A. Henry Hempe /s/

A. Henry Hempe, Commissioner

Paul A. Hahn /s/

Paul A. Hahn, Commissioner